IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8331 OF 2006.

Mrs.Suman Jagannath Shukla. ... Petitioner.

Versus.

Sou.Shakambari Dattatray Joshi. ... Respondent.

Shri Surel S.Shah for the Petitioner.

Shri T.D.Deshmukh for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 20th February, 2007.

P.C.:

1. Rule. The Advocate for the Respondent waives service. Taken up for hearing forthwith.

2. By this writ petition under Article 227 of the Constitution of India, the Petitioner/original Plaintiff has taken exception to the order dated 21st August 2006 passed by the trial Court below Application at Exh.16. The Application at Exh.16 was made by the Petitioner for amendment of the plaint.

3. Prayer in the suit filed by the Petitioner is for declaration that the document dated 18th November 1973 stands cancelled. A prayer is also made for possession of the suit property.

4. By Application at Exh.16 the Petitioner applied for amendment. The first part of the amendment was for correcting the date of the document in respect of which

the prayer for declaration was sought. The prayer was for correcting the said date as according to the Petitioner the correct date of the document was 19th October 1973. The second part of the amendment is as regards the amount allegedly paid by the Respondent to the Petitioner. The amendment sought was that the said amount mentioned as Rs.5,000/- should be permitted to be amended. It was prayed that instead of Rs.5000/-, an amount of Rs.5100/- should be incorporated. The said amendment has been rejected by the trial Court on the ground that the amendment, if allowed, would change the nature of the suit.

5. After hearing the learned Advocates appearing for the parties, I am of the view that the impugned order is erroneous. By the said Application a prayer was made for correcting inadvertant and/or typing mistakes in the plaint. Looking to the nature of the proposed amendment, it is obvious that the nature of the suit will not be changed. In my view the trial Court ought to have allowed the amendment.

6. Hence the following order is passed:

i) Petition is allowed. The impugned order dated 21st August 2006 is quashed and set aside.

ii) The Application made by the Petitioner at Exh.16 is allowed. The Petitioner will carry out amendment to the plaint within a period of two weeks from the date on which the authenticated copy of this order is produced before the trial Court.

iii) It will be open for the Respondents to file additional written statement within a period of eight weeks from the date on which the amendment is carried out.

iv) All contentions of the parties are kept open.

v) Rule is made absolute in the above terms with no order as to costs.

Judge.